

GUIDELINES

FOR

***FACILITIES RENOVATION AND
REPAIR PROJECT***

June 1, 2002 – June 30, 2004

GUIDELINES FOR FACILITIES RENOVATION AND REPAIR PROJECT

The Facilities Renovation and Repair (FRR) funds must be used to maintain compliance with health and safety requirements established by State licensing regulations and local health and fire departments, to comply with the American with Disabilities Act (ADA) of 1990, or to purchase or replace equipment necessary for the health and safety of children enrolled in State-subsidized child care and development programs.

The following program requirements are provided to assist the designated legal entity in meeting the legislative intent. Each contractor is required, as a condition of its contract with the California Department of Education (CDE), Child Development Division (CDD), to adhere to these requirements and Title 5 regulations pertaining to Child Development Programs, in addition to all other applicable laws and regulations. Any variance from these requirements, the applicable Title 5 regulations, laws and regulations could be considered a noncompliance issue and subject the contractor to possible termination of the contract.

I. General Provisions

A. National Labor Relations Board/Federal Court Order

By signing this contract, the contractor swears under penalty of perjury that no more than one final unappealable finding of contempt of court has been issued by a federal court against the contractor within the last two (2) years because of failure to comply with a federal court order for compliance with an order of the National Labor Relations Board (Public Contract Code Section 10296). This provision does not apply to public entities.

B. Notification of Address Change

Contractors shall notify CDD in writing of any change in mailing address for communication regarding the contract (administrative address) within ten (10) calendar days of the address change. For non-public agencies, the notification must be accompanied with (1) board minutes verifying the change in address and (2) a copy of the notification to the Internal Revenue Service of the address change.

Contractors shall notify CDD in writing of any proposed change in operating facility address(es) at least thirty (30) calendar days in advance of the change unless such change is required by an emergency such as fire, flood or earthquake.

C. Issuance and Use of Checks

Except for external payroll services, private contractors shall not use any pre-signed, pre-authorized, or pre-stamped checks without the prior written approval of CDD.

Private contractors shall require two (2) authorized signatures on all checks unless: (1) the contractor has a policy approved by its governing board requiring dual signatures only on checks above a specified dollar amount and (2) the annual audit verifies that appropriate internal controls are maintained.

D. Prohibition Against Loans and Advances

Contractors shall not loan contract funds to individuals, corporations, organizations, public agencies or private agencies. Contractors shall not advance unearned salary to employees. Contractors shall not make advance payments to subcontractors and shall compensate subcontractors after services are rendered or goods are received.

E. Materials Developed with Contract Funds

If the contractor receives income from materials developed with contract funds, the use of the income shall be restricted to the child development program. If the materials were developed in part with contract funds, the income from the sale of the materials that shall be used in the child development program shall be computed in direct proportion to the share of contract funds used in development of the materials.

Materials developed with contract funds shall contain an acknowledgement of the use of State funds in the development of materials and a disclaimer that the contents do not necessarily reflect the position or policy of the CDE.

F. Contractor's Termination for Convenience

1. General Termination for Convenience

A contractor may terminate the contract for any reason during the contract term. The contractor shall notify CDD of its intent to terminate the contract at least ninety (90) calendar days prior to the date the contractor intends to terminate the contract.

Within fifteen (15) days from the date the contractor notifies CDD of its intent to terminate the contract, the contractor shall submit: (1) a current inventory of equipment purchased in whole or in part with contract funds.

Upon receipt of a notice of intent to terminate, CDD will transfer the program to another agency as soon as practicable.

The State shall only be obligated to compensate the contractor for net reimbursable program costs in accordance with this contract through the date of termination. There shall be no other compensation to the contractor. The State shall offset any monies the contractor owes the State against any monies the State owes under this contract.

2. Changes in Laws or Regulations

CDD shall notify contractors in writing of changes in laws or regulations prior to the effective date or as soon as possible after enactment. If any laws or regulations are changed substantially during the contract period, the contractor shall have the option to discontinue performance and be relieved of all obligations for further performance.

The contractor has thirty (30) calendar days from receipt of notification of pending changes to notify CDD in writing of the contractor's intent to terminate if the required changes are unacceptable to the contractor. The contract shall be deemed terminated sixty (60) calendar days after receipt of the notification of the intent to terminate.

G. Applicability of Corporations Code

Except for partnerships and sole proprietorships, private contractors shall be subject to all applicable sections of the Corporations Code including standards of conduct and management of the organization.

H. Conflicts of Interest

For any transaction to which the contractor is a party and the other party is: (a) an officer or employee of the contractor or of an organization having financial interest in the contractor; or (b) a partner or controlling stockholder or an organization having a financial interest in the contractor; or (c) a family member of a person having a financial interest in the contractor, the transaction(s) shall be fair and reasonable and conducted at arm's length.

Based on corporate law (Corporations Code sections 310, 5233-5234, 7233 and 9243 as applicable) the general rules that would be followed to ensure that transactions are conducted "at arm's length" include: (1) prior to consummating the transaction, the governing body should authorize or approve the transaction in good faith and the board should require the interested party, or parties, to make full disclosure to the board both in writing and during the board meeting where the transaction is being discussed and (2) all parties having a financial interest in the transaction should refrain from voting on the transaction and it should be so noted in the board minutes.

If the transaction involves the renting of property, either land or buildings, owned by affiliated organizations, officers or other key personnel of the contractor or their families, the board of directors shall request the interested party to obtain a "fair market rental estimate" from an independent appraiser. Rental costs for equipment owned by affiliated organizations, officers or other key personnel of the contractor or their families are allowable only as use or depreciation allowance.

I. Americans with Disabilities Act

By signing this contract, the contractor assures CDE that it shall comply with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 et seq.) as well as all applicable federal and state laws and regulations, guidelines and interpretations issued thereto.

J. Air or Water Pollution Violations (Government Code Section 4477)

By signing this agreement, the contractor swears under penalty of perjury that the contractor is not: (1) in violation of any order or resolution not subject to review promulgated by the state Air Resources Board or an air pollution control district; (2) subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution. This provision does not apply to public agencies.

K. Recycled Paper Certification (Public Contract Code Section 10308.5/10354)

The contractor agrees to certify in writing to CDE, under penalty of perjury, the minimum, if not exact, percentage of recycled content, both postconsumer material and secondary material as defined in Public Contract Code Sections 12161 and 12200, in materials, goods

or supplies offered or products used in the performance of the contract, regardless of whether the product meets the required recycled product percentage as defined in Sections 12161 and 12200. The contractor may certify that the product contains zero recycled content Appraisers or the American Institute of Real Estate Appraisal. If the contractor has no board or is a sole proprietor, the requirement for a "fair market rental estimate" shall also apply. The contractor has the burden of supporting the reasonableness of rental costs. If the property is owned by the contractor, rental costs are not reimbursable and costs may be claimed only as depreciation or use allowance. Any transaction described in this paragraph shall be disclosed by the auditor in the notes to the financial statement in the annual audit.

L. Child Support Compliance (Public Contract Code Section 7110)

By signing this agreement, the contractor acknowledges that (a) it recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement including, but not limited to, disclosure of information and compliance with earnings assignment orders as provided in Chapter 8 (commencing with Section 5200) of part 5 of Division 9 of the Family Code; and (b) to the best of its knowledge it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

M. Unlawful Denial of Services (Government Code Section 11135)

No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

As used in this section, "disability" means any of the following with respect to an individual: (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of an impairment as described in paragraph (1), or (3) being regarded as having an impairment as described in paragraph (1).

N. Computer Software Copyright Compliance

By signing this agreement, the contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

O. Union Organizing and Activities

Contractor by signing this agreement hereby acknowledges the applicability to this agreement of Government Code Section 16645 through Section 16649.

1. Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
2. No state funds received under this agreement will be used to assist, promote or deter union organizing.
3. Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
4. If the contractor incurs costs or makes expenditures to assist, promote or deter union organizing, the contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs. The contractor shall provide these records to the Attorney General upon request.

Contractor hereby certifies that no request for reimbursement or payment under this agreement will seek reimbursement for costs incurred to assist, promote or deter union organizing.

P. Equipment Inventory

Property records must be maintained that include a description of the equipment, serial number or other identification number, the source of the equipment, the acquisition date, the cost of the equipment, the location, use and condition of the equipment and any ultimate disposition date including date of disposal and sale price if applicable. A physical inventory of equipment must be taken at least every two years and reconciled with property records. A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft (any loss damage or theft must be investigated) and adequate maintenance procedures must be developed to keep the equipment in good condition.

Q. Renovation and Repair

Improvement of sites and adjacent grounds to meet or continue to meet Title 22, *California Code of Regulations*, Community Care Licensing Standards is reimbursable if the improvements do not unnecessarily increase the value of a facility. For private agencies, such proposed work in excess of five thousand dollars (\$5,000), unless performed by contractor's staff, shall have at least three (3) bids or estimates and shall be awarded to the lowest responsible bidder. If the agency cannot obtain three bids or estimates, the contractor shall maintain adequate documentation of the reason(s) why three bids or estimates could not be obtained as well as the reasonableness of cost in the absence of competition. Public agencies shall comply with applicable sections of the *Public Contract Code*.

For private agencies, all equipment purchases, exceeding five thousand dollars (\$5,000) will require at least three (3) bids or estimates. The contractor shall purchase the goods or services from the lowest responsible bidder. If three bids or estimates cannot be obtained, the contractor shall maintain adequate documentation of the reason(s) why three bids or estimates could not be obtained (e.g., an emergency situation). Public agencies shall comply with applicable sections of the *Public Contract Code*.

R. Bids for Subcontracts

Private contractors shall obtain at least three (3) bids or estimates for subcontracts that exceed five thousand dollars (\$5,000). The subcontract shall be awarded to the lowest responsible bidder. If three (3) bids or estimates cannot be obtained, the private contractor shall maintain documents that establish the reasons why three bids or estimates could not be obtained and the reasonableness of the proposed expenditure without three bids or estimates. Public agencies shall award subcontracts in accordance with the *Public Contract Code*. The contractor shall not split subcontracts to avoid competitive bidding requirements. The budget for a proposed subcontract for renovation and repair shall show the total cost of labor and the total cost of materials. Contractors shall demonstrate that approval of the subcontract is cost effective to the state. For proposed renovation and repair subcontracts, private agencies shall maintain documents showing that the bidder selected by the contractor has obtained a payment bond in an amount not less than one-half (1/2) the amount of the proposed subcontract.

The state does not assume any responsibility for performance of approved subcontracts nor does the state assume responsibility for any unpaid debt of the contractor resulting from subcontracting liens.

Subcontracts which increase the contractor's cost of performance are nonreimbursable. Subcontracts which contain a provision for reimbursement for cost-plus-a-percentage-of-cost are nonreimbursable.

II. Agency Responsibilities

Agencies must use the funding described in this Management Bulletin to accomplish one or more of the outcomes listed in items "1" and "2" described below. All FRR funds must be expended to repair or renovate eligible center-based sites where agencies have active State-subsidized child care and development programs with center-based service contracts.

Following is a list of terms used throughout the guidelines:

"agency" means any agency that has an executed contract with CDE/CDD, to provide child care and development services through a direct, center-based delivery system.

"application" means the application and required attachments described in this Management Bulletin.

"CDE" means the California Department of Education.

"cde" means child days of enrollment.

"child care and development facility" means any residence or building or part thereof in which child care and development services are provided.

"MRA" means the Maximum Reimbursable Amount an agency is entitled to receive under its contract with CDE.

“playground” means an improved outdoor area that adjoins a child care or child development facility and is designed, equipped, and set aside for children’s play, including: 1) climbing structures and other stationary, outdoor play equipment, 2) surfacing, 3) fencing, 4) internal pathways, 5) internal land forms, 6) lighting, 7) benches, 8) shade, and 9) other related structures. Playground does not mean swimming pools, basketball courts, soccer fields, football fields, tennis courts, field tracks, racquetball courts, and other athletic playing fields or athletic courts.

“playground equipment” means a fabricated structure located at a playground which has at least one surface designated and intended for play by children and which is anchored to or built into the ground and not intended to be moved.

(*Note:* Under this Management Bulletin, use of these funds for repair and renovation of playgrounds is not allowed).

A. ADA Compliance

Repair or renovate a child care facility to increase accessibility for children with disabilities. Examples of eligible ADA projects include, but are not limited to:

- Remodel or replace bathroom lavatories, fixtures, or controls
- Repaint parking surface(s) to establish required ADA accessible parking spaces and access aisles in parking areas designated for CDE, CDD programs
- Purchase and install signs showing the symbol of accessibility
- Repair or install wheelchair access ramps, landings, surfacing, or transfer systems
- Repair or install elevated wheelchair access platforms
- Repair or install appropriate access routes
- Remodel door casings or replace doors impeding access
- Repair or purchase ADA compliant fixed storage equipment (cabinets, shelves, and closets)
- Remodel fixed or built-in seating or tables

B. Health and Safety Compliance

Repair or renovate a child care facility to resolve either of the following:

- *Health and Safety Code* violation issued by the Department of Social Services, Community Care Licensing Division; CDE; or local fire or health department.
- *Health and Safety Code* violation or concerns that were revealed through an agency’s internal, self-assessment program.

Examples of eligible projects include, but are not limited to:

- Repair or replace unsafe windows, doors, or floors
- Repair or replace unsafe carpet, linoleum, or tile
- Repair or replace unsafe appliances
- Repair or replace faulty electrical wiring
- Repair or install air conditioning or heating systems
- Repair unsafe sidewalks or parking lots

- Repair or install observation windows in infant centers
- Repair or install safety lighting
- Replace unsafe cubbies and storage cabinets
- Paint the building's interior or exterior walls
- Remove or replace wallpaper
- Industrial cleaning of facility

C. Use of Funds

Contractors cannot use FRR funds to accomplish any of the following outcomes:

- Purchase, lease, or improve land
- Purchase or construct a child care facility
- Pay for a major improvement that increases the value of a child care facility
- Pay for initial playground inspection conducted by a certified playground safety inspector
- Pay for improvements to playgrounds or playground equipment
- Purchase or repair playground equipment, or any items relating to playground areas
- Reimburse an agency for expenses incurred in the preparation of this application

Other examples of inappropriate uses of funds include, but are not limited to:

- Capital outlay projects
- Modification of an existing facility to increase licensing capacity or program expansion
- Purchase equipment or supplies to meet curriculum needs
- Extension of sewer lines
- Replace, relocate, or purchase portable buildings
- Renovate libraries, staff rooms, or other areas that do not serve families or children
- Expenses incurred for meetings, workshops, training, food, or beverages
- Overhead expenses such as costs for rental/lease of space utilities, office supplies, and other miscellaneous project costs
- Personnel costs
- Interest charges or payments on bonds or indebtedness required to finance project costs
- Bonus payments for early completion of work
- Fines or penalties incurred for violation of federal, state, or local laws, ordinances, or regulations
- Travel or per diem expenses
- Costs connected with contractor claims against the grantee
- Costs incurred prior to the execution of the Local Agreement for Child Development Services contract

The agency and property owner must comply with their commitments to ensure the facilities benefiting from the use of the funds as described above will be available for, and used to serve, subsidized children in a CDE child care and development funded program FOR AT LEAST THREE CONSECUTIVE YEARS from the date of contract completion.

If the agency voluntarily elects to move the program(s) benefiting from the funds described above to a new site, CDE will bill the agency for the portion of the three years the facility is not in use by CDE programs.

If the property owner requires the CDE contractor to vacate the site where the funding was expended, CDE will bill the property owner for the portion of the three years that the facility is not available to CDE programs.

CDD acknowledges that some adjustments to the proposed use of funds may be necessary when the agency finalizes necessary bids for proposed projects. If adjustments to the proposed estimated costs occur which result in a change in the scope of work (e.g., some projects will not be completed because estimated costs were too low), a contract amendment is required before work commences.

D. Reimbursement Costs

Agencies receiving an award of funding are required to comply with the funding calculations described in this Management Bulletin, including the proration of costs for certified and noncertified enrollment. CDE will bill agencies for any unauthorized expenditures or expenditures that do not comply with the cost proration calculations.

Reimbursable costs must be incurred during the contract period. Contractors shall not use current year contract funds to pay prior or future year obligations.

Contracts and subcontracts shall be reimbursed for travel and per diem expenses at rates not exceeding those amounts paid to CDE's represented employees computed in accordance with State Department of Personnel Administration (DPA) regulation, *California Code of Regulations*, Title 2, Subchapter 1.

Nonreimbursable costs will be determined in accordance with the General (GCTR) Funding Terms and Conditions, Section V.F., "Nonreimbursable Costs."

E. Reporting Requirements

Private agencies (including proprietary entities) that receive \$300,000 or more in total federal funds are required to have an Organization Wide Audit (OWA) performed in accordance with OMB Circular A-133 and the "Audit Guide for Audits of Child Development and Nutrition Programs" prepared by CDE's Audits and Investigations Division (AID). Governmental and other public agencies (excluding school districts, county office of education and community college districts) must comply with the requirements of OMB Circular A-128 and the CDE's "Audit Guide." All other agencies (excluding school districts, county offices or education and community colleges) must submit a contractor audit performed in accordance with the CDE's "Audit Guide."

The Expenditure and Revenue Report Form (CDFS 9529) must be submitted once during the contract period and is due July 20, 2004. Please complete and submit this form directly to your assigned fiscal analyst at:

California Department of Education
Child Development Fiscal Services
P.O. Box 1317
Sacramento, CA 95812-1317

If you have questions regarding this application, please contact Cheryl Umbay, FRR Coordinator, in CDE/CDD by phone at (916) 445-4820, or by email at cumbay@cde.ca.gov.

